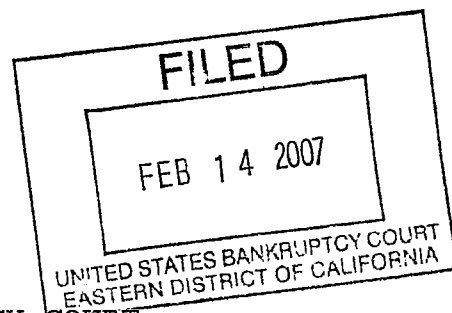


4



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 06-23803-C-7
)	
DAVID W. STEWART,)	MC No. JMS-1
)	
Debtor.)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION FOR RELIEF FROM AUTOMATIC STAY NOT INTENDED FOR
PUBLICATION**

These findings of fact and conclusions of law, which are not intended for publication, are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtor filed his voluntary chapter 7 petition on September 25, 2006. He scheduled real property commonly known

27

1 as 1914 Ivycrest Way, Sacramento, CA 95835 ("property") as
2 property of the estate. The first meeting of creditors was
3 held on November 3, 2006. The chapter 7 trustee filed a report
4 finding that there is no property available for distribution
5 from the estate over and above that exempted by the debtor.
6 Debtor was discharged from all dischargeable debts on January
7 9, 2007.

8 On January 12, 2007, Wells Fargo Bank, N.A. ("movant")
9 filed a motion, notice, and declaration requesting that this
10 court vacate the automatic stay to permit movant to foreclose
11 upon the property. The fair market value of the property is
12 approximately \$480,000.00. Movant has a lien on the property
13 in the approximate amount of \$418,319.26. There are other
14 liens against the property in the approximate amount of
15 \$107,389.00.

16 No opposition to the motion was filed within the time
17 prescribed by Local Bankruptcy Rule 9014-1(f)(1). The parties
18 have consented to taking evidence by affidavit and have not
19 demonstrated that there is any disputed material factual issue.
20 See L. Bankr. R. 9014-1(f)(1). The evidentiary record is
21 closed. Id.

22 Upon review of the record, the court determined that
23 the written record was adequate and that no oral argument is
24 necessary.

25 Conclusions of Law

26 The automatic stay of acts against debtor in personam
27 expires when the debtor is granted a discharge. 11 U.S.C.
28

1 § 362(c)(2)(C). Acts against property of the estate remain
2 stayed until the earliest of the time when the bankruptcy case
3 is closed, dismissed, or the property ceases to be property of
4 the estate. 11 U.S.C. § 362(c). The automatic stay may be
5 terminated earlier if debtor fails to protect the secured
6 party's interest adequately, § 362(d)(1), and, with respect to
7 a stay of an act against property, debtor does not have equity
8 in the property, § 362(d)(2)(A), and the property is not
9 necessary to an effective reorganization. 11 U.S.C. §
10 362(d)(2)(B). The issue of whether the property is necessary
11 to an effective reorganization is not considered in a chapter 7
12 case because no reorganization is contemplated in a chapter 7
13 case.

14 Although the debtor does not appear to have any equity
15 in the property, since the debtor was granted a discharge, the
16 automatic stay has expired as to the debtor. Thus, the motion
17 insofar as it is directed at the interest of the debtor is moot
18 and will be denied.

19 However, the motion will be granted as to the interest
20 of the trustee.

21 An appropriate order will issue.

22 Dated: February 14, 2007

23
24 
25 _____
26 UNITED STATES BANKRUPTCY JUDGE
27
28

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

David W. Stewart
1914 Ivycrest Way
Sacramento, CA 95835

Paul M. Jamond
Attorney at Law
200 4th St., #300
Santa Rosa, CA 95401

John M. Sorich
Alvarado & Associates, LLP
4 Park Plaza, Suite 1230
Irvine, CA 92614

Frederick J. Lucksinger
P.O. Box 2460
Rocklin, CA 95677

Office of the United States Trustee
United States Courthouse
501 "I" Street, Suite 7-500
Sacramento, CA 95814

Dated: 2/15/07



Deputy Clerk